

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/224,980 01/04/99 WALDROP

A 2003-1

IM62/0830

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EXAMINER

BEFUMO, J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED:

08/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/224,980	WALDROP ET AL.
Period for Reply	Examiner	Art Unit
	Jenna-Leigh Befumo	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1) Responsive to communication(s) filed on _____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 - 5 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 - 5 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) _____.

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	20) <input type="checkbox"/> Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 – 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 10, 12, and 16 of Waldrop et al., U.S. Patent No. 5,856,249. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both drawn to a textile fabric, with two sets of synthetic yarns running transverse to one another, exhibiting resistance to strength degradation due to ultraviolet irradiation. The UV resistance is imparted by a plurality of elastomeric sheath/core monofilaments in at least one and possibly both directions.

3. Claims 1, 4, and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of McLarty, III et al., U.S. Patent No. 5,533,789. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both drawn to a textile fabric, with at least two sets of synthetic yarns running transverse to one another. The elastomeric synthetic yarn should comprise more than 40% of the fabric by weight as long as there are about the same number of elastomeric yarn

or more as there are weft yarns. McLarty, III et al. (789) does not disclose the UV and elongation properties of the synthetic elastomeric yarn, however these properties would be inherent to the monofilament.

4. Claims 1, 4, and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 6 and 9 of McLarty, III et al., U.S. Patent No. 5,632,526. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both drawn to a textile fabric, with at least two sets of synthetic yarns running transverse to one another. Based on the design parameter set forth in the claims and the denier of the yarn the elastomeric synthetic fibers will comprise more than 40% of the fabric by weight when using the 32 monofilaments per inch and 16 wrapped filaments per inch in transverse directions. McLarty, III et al. (526) does not disclose the UV and elongation properties of the synthetic elastomeric yarn, however these properties would be inherent to the monofilament.

5. Claims 1 – 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 12 of McLarty, III, U.S. Patent No. 5,855,991. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both drawn to a textile fabric, with two sets of synthetic yarns running transverse to one another. The elastomeric yarn is made from a sheath/core bicomponent with the sheath component having a lower melting point than the core component. McLarty (991), III fails to disclose the elastomeric yarn being more than 40% by weight of the fabric and the elongation at break and resistance to UV light. However, a plain weave design would use one warp yarn for each fill, so the elastomeric synthetic yarn should be at least 40% of

the total weight of the fabric. The elongation at break and the UV resistance are inherent to the elastomeric yarn that is used and not based on an additive or special construction therefore these qualities would be inherent to the McLarty, III (991) fabric.

Claims 1 – 5 are directed to an invention not patentably distinct from claims of commonly assigned McLarty, III et al. (789), McLarty, III et al. (526), and McLarty (991). Specifically, they are all drawn to a textile fabric, with at least two sets of synthetic yarns running transverse to one another. The elastomeric synthetic yarn is made from a sheath/core bicomponent with the sheath component having a lower melting point than the core component..

Commonly assigned McLarty, III et al. (789), McLarty, III et al. (526), and McLarty (991), discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78(c) and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "synthetic yarns" in claim 1 is indefinite because the applicant fails to define the structure and type of polymer used in the yarns running in the first and second direction.

Claim Rejections - 35 USC § 102/103

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1 –5 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McLarty, III et al. (789).

McLarty, III et al. (789) discloses in Figure 6 and 7 a weft-knitted fabric with a synthetic elastomeric yarn **30** running transverse to a synthetic weft-inserted yarn **42**. The synthetic elastomeric yarn is made from the ELAS-TER™ monofilament (column 3, line 34), the same monofilament preferred by the applicant. Therefore the fabric would inherently have the same elongation and UV resistance properties. The monofilament would also inherently be a sheath/core bicomponent with the same sheath and core melting points as claimed by the applicant. McLarty, III et al. (789) does not disclose that the elastomeric synthetic fiber is 40% by weight of the fabric. Based on the design parameters and denier of the yarns (column 3, paragraphs 5 and 6), as long as the high end of monofilaments per inch, 32, and the low end of the weft-inserted yarns per inch, 16, are chosen the monofilament will inherently comprise more than 40% of the fabric by weight. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed elongation at break and the tensile strength retention would obviously have been provided by the McLarty, III et al. (789) fabric. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

11. Claims 1 – 5 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McLarty, III et al. (526).

McLarty, III et al. (526) discloses in Figure 6 and 7 a weft-knitted fabric with a synthetic elastomeric yarn **30** running transverse to a synthetic weft-inserted yarn **42**. The synthetic elastomeric yarn is made from the ELAS-TER™ monofilament (column 3, line 39), the same monofilament preferred by the applicant. Therefore the fabric would inherently have the same elongation and UV resistance properties. The monofilament would also inherently be a

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sheath/core bicomponent with the same sheath and core melting points as claimed by the applicant. McLarty, III et al. (526) does not disclose that the elastomeric synthetic fiber is 40% by weight of the fabric. Based on the design parameters and denier of the yarns (column 3, paragraphs 5 and 6), as long as the high end of monofilaments per inch, 32, and the low end of the weft-inserted yarns per inch, 16, are chosen, the monofilament will inherently comprise more than 40% of the fabric by weight. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed elongation at break and the tensile strength retention would obviously have been provided by the McLarty, III et al. (526) fabric. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

12. Claims 1 – 5 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McLarty, III (991).

McLarty, III (991) discloses in Figure 2 a woven fabric with a synthetic elastomeric yarn **18** running transverse to a synthetic weft-inserted yarn **22**. The synthetic elastomeric yarn is made from the ELAS-TERTM monofilament (column 3, line 65), the same sheath/core bicomponent monofilament preferred by the applicant. Therefore the fabric would inherently have the same elongation and UV resistance properties. The monofilament would also inherently have the same sheath and core melting points as claimed by the applicant (column 3, lines 54 – 57). McLarty, III (991) does not disclose that the elastomeric synthetic fiber is 40% by weight of the fabric. However, based on the design parameters and denier of the yarns (column 4, paragraph 1), 22 monofilaments per inch and 20 picks (synthetic yarns) per inch, the monofilament will inherently comprise more than 40% of the fabric by weight. The burden is

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upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed elongation at break and the tensile strength retention would obviously have been provided by the McLarty, III (991) fabric. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

13. Claims 1 – 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Himelreich, Jr.* (4,469,738).

Himelreich, Jr. teaches a furniture support material made with two sets of elastomeric synthetic yarns either woven in transverse direction to each other, column 9, line 46 – 52, or extruded through a pair of concentric dies rotating transverse to one another, column 9, 1st paragraph. The elastomeric synthetic yarn are “sheath/core monofilament, where the melting point of the sheath component is substantially lower than the melting point of the core component”, column 2, line 40 – 42. The weave or net material can be made from a sheath/core monofilament in both directions, as in example 4, making up 100% of the fabric by weight. Therefore the elastomeric synthetic yarns running in one direction would comprise at least 40%, by weight, of the fabric. *Himelreich, Jr.* also teaches that an ultraviolet stabilizer can be added to the monofilaments, column 8, line 35.

Himelreich, Jr. does not explicitly teach the elongation at break of the elastomers and the tensile strength retention after accelerated exposure to 488 kilojoules of ultraviolet irradiation limitations. However, it is reasonable to presume that said limitations are inherent to the invention of *Himelreich, Jr.* Support for said presumption is found in the use of similar materials (i.e. similar bicomponent fibers with UV stabilizers added) and in similar end uses (i.e. flexible

support member is seat bottoms and backs). The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed elongation at break and the tensile strength retention would obviously have been provided by the synthetic yarn disclosed by Himmelreich, Jr. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McClintock et al. (5,457,968), Gretzinger et al. (4,469,739), and Benedyk (4,281,689) disclose similar seating material using a monofilament or large diameter fiber in one direction. Shi et al. (5,458,956) discloses an UV resistant material. Golder et al. (4,778,839) and Golder et al. (4,797,437) both disclose an elastomeric with UV stabilizers as additives.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00am - 4:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

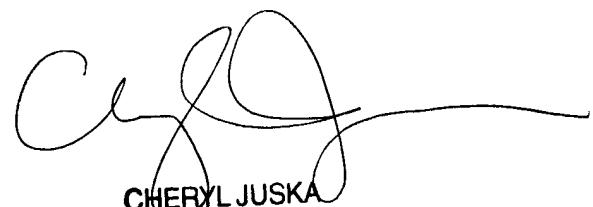
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Jenna-Leigh Befumo

Patent Examiner

Art Unit: 1771

August 24, 2000



CHERYL JUSKA
PATENT EXAMINER